



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/EV/23/4078

Re: Property at 26F Forrester Park Loan, Edinburgh, EH12 9AG (“the Property”)

Parties:

Mr Robert Peter Dick, 24 Venturefair Drive, Edinburgh, EH17 8WD (“the Applicant”)

Ms Bobbie McFarland and Mr Ian McFarland, 26F Forrester Park Loan, Edinburgh, EH12 9AG (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 26F Forrester Park Loan, Edinburgh, EH12 9AG under Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents. The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 14 November 2023, the Applicant’s solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession the Property in terms of Rule 66 the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Short Assured tenancy dated 24 May 2013, an AT5 dated 24 May 2013, a Notice to Quit and Section 33 Notice dated 26 June 2023 together with Sheriff Officers' execution of service dated 26 June 2023 and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 with an email to Edinburgh City Council dated 14 November 2023.
3. On 17 November 2023 the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 28 December 2023, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 19 February 2024. The Respondent required to lodge written submissions by 18 January 2024. This paperwork was served on the Respondents by Christopher Andrew, Sheriff Officer, Edinburgh on 3 January 2024 and the Executions of Service were received by the Tribunal administration.

Case Management Discussion

5. The Tribunal proceeded with the CMD on 19 January 2024 by way of teleconference. The Applicant was represented by Ms Bethany from TC Young, solicitors. Ms McFarland appeared on her own behalf and on behalf of her husband Mr McFarland
6. The Tribunal had before it the Short Assured tenancy dated 24 May 2013, an AT5 dated 24 May 2013, a Notice to Quit and Section 33 Notice dated 26 June 2023 together with Sheriff Officers' execution of service dated 26 June 2023 and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 with an email to Edinburgh City Council dated 14 November 2023. The Tribunal noted the terms of these documents.
7. Ms Bethany for the Applicant moved the Tribunal to grant an order for eviction. She submitted the Property was let in terms of a Short Assured Tenancy dated 24 May 2013 with an initial period to 4 December 2013. A Notice to Quit and a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 were served on the Respondents by Sheriff Officers on 26 June 2023 giving notice the Applicant required repossession of the Property as at 4 September 2023. She submitted that tacit relocation was not operating, that there was no further contractual tenancy and that the terms of Section 33 of the Housing (Scotland) Act 1988 had been complied with.
8. With regard to reasonableness, she advised the Applicant was aged 39. He had previously been an electrician. He had been diagnosed with bowel cancer and was on statutory sick pay. He paid £598.02 per month for the mortgage at the Property and received £528.05 rent every month. Continuing letting the

Property was not cost effective and the Applicant wanted to sell the Property as he no longer wanted to be a landlord due to his change in circumstances. The Applicant had no disposable income. It was a two bedroomed property.

9. On being questioned by the Tribunal, the Tribunal noted the rent was stated as being £600. Ms Bethany thought the difference in the figures she had been given by the Applicant was that the letting agent would take their fees off the rent before passing the remainder of the rent to him.
10. Ms McFarland advised that the Property was damp and mouldy. They had lived there for over 10 years. Her son born in 2022 had issues with his health. She also had two other children aged 13 and 5. She had gone to the Council for help but they had not been able to offer the family any temporary accommodation. She explained they do not want to stay in the Property. They needed another home.
11. With regards to the rent Ms McFarland explained she paid £680 per month. She made up the shortfall herself.

Findings in Fact

12. The Applicant entered into a Short Assured Tenancy Agreement commencing 24 May 2013 with the Respondents. The Respondents received an AT5 on 24 May 2013.
13. In terms of the Short Assured Tenancy Agreement the tenancy commenced 24 May 2013 to 4 December 2013. Parties agreed that the agreement would continue thereafter on a monthly basis until terminated.
14. In terms of the Short Assured Tenancy Agreement the Respondents agreed to pay rent of £600 per month. The rent has increased to £680 per month.
15. The Applicant's solicitor served Notices to Quit and Notices in terms of Section 33 of the Housing (Scotland) Act 1988 both dated 26 June 2023 on the Respondents by Sheriff Officers on 26 June 2023. The Notice to Quit and the Section 33 Notice expired on 4 September 2023.
16. The Short Assured Tenancy reached its end as at 4 September 2023.
17. *Tacit relocation* is not operating. The contractual Short Assured Tenancy had been brought to an end on 4 September 2023.
18. The Applicant has been diagnosed with cancer. He previously worked as an electrician but now receives statutory sick pay. He wishes to sell the Property.

19. The Respondents live in the Property with their 3 children. The Property has two bedrooms. The Respondents no longer want to live in the Property. They are seeking assistance from the Homeless Team at Edinburgh City Council.
20. The Applicant's solicitor served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Edinburgh City Council on 14 November 2023.

Reasons for Decision

21. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by Ms Bethany and Ms McFarland. The Tribunal concluded that the Applicant was entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondents. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its term (termination date) on 4 September 2023; the Notice to Quit brought the contractual Short Assured Tenancy to an end on 4 September 2023 and that the Applicant had given the Respondent notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the property was required by 4 September 2023.
22. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicant to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicant also has to satisfy the Tribunal that it is reasonable to evict. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal considered that the Applicant's circumstances had significantly changed since his cancer diagnosis and that it was understandable that he no longer wanted to be a landlord and wanted to sell the Property. On the other hand, the Respondent had been very clear that she and her family did not find the Property met their needs and that they no longer wanted to live there. The Respondent was sensibly taking advice from Edinburgh City Council about their homelessness options. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.
23. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 as amended it was reasonable to grant an eviction order.

Decision

24. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

S Evans

20 February 2024

Legal Chair

Date